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10 Attorneys for Defendant  
11 JPMORGAN CHASE BANK, N.A., as acquirer of  
certain assets and liabilities of Washington Mutual Bank  
12 from the Federal Deposit Insurance Corporation acting as  
receiver (Washington Mutual Bank formerly known as  
13 Washington Mutual Bank, F.A.)

14 UNITED STATES DISTRICT COURT  
15 CENTRAL DISTRICT OF CALIFORNIA

16 BRIAN MINKOW, an individual;  
17 CHRIS O'BRIEN, an individual; and  
JUDY HOFFMAN-BARRON, an  
18 individual,

19 Plaintiffs,

20 v.

21 WASHINGTON MUTUAL BANK, a  
Washington Corporation;  
22 WASHINGTON MUTUAL BANK,  
F.A., a Washington Corporation; and  
23 Does 1 through 100, inclusive,

24 Defendants.

Case No. CV08-05960 R (RCx)

**FINDINGS OF  
UNCONTROVERTED FACTS AND  
CONCLUSIONS OF LAW**

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**FINDINGS OF  
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CONCLUSIONS OF LAW**

1 In accordance with Rule 56 of the Federal Rules of Civil Procedure, the Motion  
2 for Summary Judgment of Defendant JPMorgan Chase Bank, N.A.'s (as acquirer of  
3 certain assets and liabilities of Washington Mutual Bank from the Federal Deposit  
4 Insurance Corporation acting as receiver) ("Defendant") came on regularly for hearing  
5 on July 27, 2009, the Honorable Manuel L. Real, United States District Judge  
6 presiding.

7 The Court, having considered the points and authorities submitted by the  
8 parties, the declarations and exhibits thereto, the relevant pleadings and papers on file  
9 with the Court and having heard the oral argument or counsel thereon, and having  
10 fully considered the law and facts disclosed by this record, hereby makes the  
11 following findings on uncontroverted facts and conclusions of law:

12 **STATEMENT OF UNCONTROVERTED FACTS**

13 1. Plaintiffs Judy Hoffman-Barron ("Hoffman-Barron"), Brian Minkow  
14 ("Minkow") and Chris O'Brien ("O'Brien") (collectively, "Plaintiffs") joined  
15 Washington Mutual Bank ("WaMu" or the "Bank") following its acquisition of Home  
16 Savings of America. After joining WaMu's payroll in late June or early July 1999,  
17 Plaintiffs subsequently participated in WaMu's Loan Consultant Incentive Plan and  
18 Sales Assistant Program beginning on January 1, 2000.

19 2. After becoming employees of WaMu in 1999, Plaintiffs were employed  
20 by the Bank as at-will Home Loan Consultants in WaMu's Westlake Village,  
21 California Home Loan Center until approximately April 2008.

22 3. Through its Home Loan Centers, WaMu originated and sold residential  
23 mortgages and loans to customers. In this capacity, Plaintiffs, as Home Loan  
24 Consultants served as the primary salespersons for these home loan products, and they  
25 were responsible for, among other things, originating loans and mortgages issued on  
26 behalf of the Bank.

27 4. Generally speaking, Plaintiffs' duties and responsibilities consisted of the  
28 following: being responsible for origination of home loans through various sales and

1 marketing efforts, counseling potential customers about various home loan products,  
2 assisting prospective borrowers when filling out the home loan application, preparing  
3 a good faith estimate, making arrangements for appraisals and title reports, opening  
4 and coordinating with escrow companies, communicating with borrowers throughout  
5 the process, providing outstanding customers service, and generally shepherding a  
6 home loan through the approval process, which ultimately led to closing on the home  
7 loan transaction and the funding of a loan.

8         5. All Loan Consultants, including Plaintiffs, were primarily responsible for  
9 performing these duties, and all Loan Consultants, including Plaintiffs, were provided  
10 with support within the Bank for all phases of the loan origination process. Among  
11 other things, WaMu provided foundational support staff to Plaintiffs through its Loan  
12 Fulfillment Center, which was responsible for handling loan processing and other  
13 administrative responsibilities following a loan's origination.

14         6. In connection with the origination and funding of home loan products,  
15 WaMu generally received revenues in the form of points and fees in connection with  
16 home loans.

17         7. In turn, based upon all of the terms and conditions of the Bank's Loan  
18 Consultant Incentive Plans ("LCI Plan"), Plaintiffs (as Home Loan Consultants) were  
19 eligible to earn monthly, quarterly and annual commissions and other incentives, all of  
20 which were subject to and governed by the terms and conditions of the LCI Plans and  
21 all related plans and policies, including WaMu's Pricing Exception Policy, LCI Plan  
22 Administrative Guidelines, Sales Assistant Plan and, in the case of Minkow and  
23 O'Brien, WaMu's Partnership Plan.

24         8. WaMu's LCI Plans were issued annually at the outset of each applicable  
25 plan year. The LCI Plans formed the general compensation scheme applicable to all  
26 Loan Consultants, and where applicable (as with Plaintiffs), it incorporated the more  
27 specific terms and conditions set forth in WaMu's Sales Assistant Plan and  
28 Administrative Guidelines.

1           9. Generally speaking, Plaintiffs were eligible to earn two forms of  
2 commissions: (1) a set, per-unit commission for each home loan, and (2) a percentage,  
3 or so-called “basis point,” commissions based on the gross dollar amount of each  
4 home loan. In turn, the value of the Plaintiffs’ gross commissions was determined on  
5 an incrementally-tiered schedule, such that the value of the per-unit and basis point  
6 commissions would increase as the total number and dollar value of the loans  
7 originated increased.

8           10. Commissions were paid to Loan Consultants bi-monthly. In this regard,  
9 after the values of Plaintiffs’ gross commissions were determined based on Plaintiffs’  
10 total loan production each month, their gross commissions were subject to a  
11 reconciliation process. During the reconciliation process, Plaintiffs’ gross  
12 commissions were subject to upward and downward adjustments that ultimately  
13 resulted in Plaintiffs’ net commissions being determined for the month. These net  
14 commissions amounts represented Plaintiffs’ gross wages, which were paid to  
15 Plaintiffs through WaMu’s payroll department.

16           11. Plaintiffs’ commissions were not vested until the reconciliation process  
17 was completed and Plaintiffs’ net commissions were ultimately determined.

18           12. In this regard, Plaintiffs’ gross commissions were subject to upward  
19 adjustments, as well as different types of downward adjustments, during the  
20 reconciliation process.

21           13. For example, if Plaintiffs’ loan production during the second half of the  
22 month caused Plaintiffs to move to a higher payout “tier” (making the Loan  
23 Consultant eligible for a higher gross commission), their gross commissions for the  
24 first half of the month would be recalculated at the higher rate, through an upward  
25 adjustment applied during the reconciliation process.

26           14. Alternatively, Plaintiffs’ gross commissions were potentially subject to  
27 several types of downward adjustments, including adjustments for “pricing  
28

1 exceptions,” partnership adjustments, and adjustments related to Plaintiffs’  
2 participation in WaMu’s Sales Assistant Program.

3 15. Specifically, Plaintiffs had the ability to utilize “pricing exceptions,”  
4 whereby, for example, they could quote below published pricing to close a loan. If  
5 Plaintiffs chose to use a pricing exception, the LCI Plan provided that “the cost of the  
6 pricing exception . . . resulted in a change in the amount of the commissions earned by  
7 the [Loan Consultant].” In other words, this resulted in a downward adjustment from  
8 Plaintiffs’ gross commissions during the reconciliation process.

9 16. Additionally, Plaintiffs’ gross commissions were potentially subject to  
10 upward and downward adjustments based on their participation in the Partnership  
11 Plan. In fact, Plaintiffs Minkow and O’Brien participated in a Loan Consultant  
12 partnership throughout the relevant period of this case. As such, one individual would  
13 be designated the primary (or senior) partner each applicable partnership year, while  
14 the other was designated the co-partner (or junior partner) during that time period. As  
15 such, gross commissions generated by Plaintiffs Minkow and O’Brien were subject to  
16 upward and downward adjustments, to allocate their gross commissions and expenses  
17 in accordance with the pre-determined partnership split amongst the two.

18 17. Moreover, because Plaintiffs continually elected to participate in  
19 WaMu’s Sales Assistant Program throughout the relevant period, Plaintiffs’ gross  
20 commissions were subject to downward adjustments for amounts they agreed to  
21 allocate to their Sales Assistants.

22 18. WaMu’s Sales Assistant Program was a voluntary benefit offered to  
23 eligible, high-producing Loan Consultants, whereby those Loan Consultants could  
24 elect to retain the use of one or more Sales Assistants to whom they could delegate  
25 some of their duties and responsibilities. In general, the Sales Assistant(s) would  
26 work with the Loan Consultant, as a team, to assist with increasing loan production  
27 and, in turn, gross commissions.

1           19. In this regard, each Sales Assistant was hired by WaMu only because  
2 their assigned Loan Consultant chose to participate in the Sales Assistant Program and  
3 elected to retain the support of a Sales Assistant. WaMu did not retain a pool of Sales  
4 Assistants to be allocated to Loan Consultants as necessary; rather, each Loan  
5 Consultant, including Plaintiffs, made an individual decision whether to participate in  
6 the Sales Assistant Program and, in so doing, assisted their manager in interviewing  
7 and hiring an assistant to bring onto their team.

8           20. In turn, each Sales Assistant's employment was wholly contingent on  
9 their assigned Loan Consultant's continued employment and participation in the Sales  
10 Assistant Program.

11           21. Participation in the Sales Assistant Program was not automatic; rather,  
12 only those Loan Consultants whom met a minimum volume of loan production during  
13 the prior year (or other applicable measurement period) qualified to participate in the  
14 Sales Assistant Program.

15           22. To qualify for a Sales Assistant in calendar year 2000, a Loan  
16 Consultant's production minimum must have been at least \$40 million or 300 units in  
17 loan volume during the prior year. To qualify for a Sales Assistant for calendar years  
18 2001 through 2004, these eligibility amounts were adjusted to \$36 million of 270 units  
19 in loan volume. Importantly, a participating Loan Consultant must have met these  
20 eligibility minimums for each Sales Assistant the Loan Consultant sought to retain.

21           23. WaMu's Sales Assistant Program was a voluntary program and incentive  
22 for qualified Loan Consultants, in which Loan Consultants could affirmatively elect to  
23 participate. Loan Consultants were not required to participate in the Sales Assistant  
24 Program, and Loan Consultants were fully capable of performing all aspects of their  
25 jobs without the assistance of a Sales Assistant. In fact, nearly two-thirds of WaMu's  
26 California Loan Consultants did not participate in the Sales Assistant Program during  
27 the relevant time period.

1           24. Plaintiffs voluntarily elected to participate in the Sales Assistant Program  
2 beginning on or around January 1, 2000. In this regard, Plaintiffs were required to  
3 have met the production eligibility minimum during the prior measurement period in  
4 order to qualify for the Sales Assistant Program, *i.e.*, \$40 million in gross loan  
5 production or 300 units. Based on the commission tier structure in the applicable LCI  
6 Plan, this means that Plaintiffs must have earned a minimum of \$240,000 in gross  
7 commission during the same period, which amount only represents Plaintiffs' basis  
8 point commission.

9           25. If Plaintiffs fell below this production qualification minimum, they would  
10 no longer qualify for participation in the Sales Assistant Program or the support of any  
11 Sales Assistants.

12           26. Upon initially qualifying for the Sales Assistant Program in 2000,  
13 Plaintiff Hoffman-Barron was initially eligible for and elected the support of one Sales  
14 Assistant. Similarly, upon initially qualifying for the Sales Assistant Program and  
15 forming a partnership in 2000, Plaintiffs Minkow and O'Brien were initially entitled  
16 to and elected the support of two Sales Assistants.

17           27. For each Sales Assistant that Plaintiffs elected to retain, they were  
18 required to complete and sign annual Election Forms/Participation Agreements. In so  
19 doing, Plaintiffs acknowledged their voluntary participation in WaMu's Sales  
20 Assistant Program and their agreement to be bound by all applicable terms and  
21 conditions set forth in the LCI Plan, the Sales Assistant Plan and the Election  
22 Form/Participation Agreement.

23           28. In the Election Forms/Participation Agreements, Plaintiffs also  
24 designated the specific compensation structure for each Sales Assistant they chose to  
25 retain. In this regard, Sales Assistants received two distinct forms of compensation:  
26 (1) a monthly base salary (plus benefits), and (2) a per-unit bonus for each funded  
27 loan.



1           29. Regarding Sales Assistant compensation, WaMu agreed to fund up to  
2 \$2,500 per month (plus benefits) for each Production Qualified Sales Assistant,<sup>1</sup>  
3 which amount could be allocated between base salary and bonus at Plaintiffs'  
4 discretion.

5           30. Through the Election Forms/Participation Agreements, Plaintiffs  
6 prospectively agreed to allocate a discretionary portion of their gross commissions to  
7 cover any amounts for the Sales Assistants' compensation in excess of the bank-  
8 subsidized \$2,500/month, in the form of a "Commission Threshold" or "Commission  
9 Adjustment."

10           31. For the most part, Loan Consultants, including Plaintiffs, chose to  
11 compensate their Sales Assistants with a base salary of \$2,500 per month, resulting in  
12 the Bank paying 100% of most Sales Assistants' base salary and benefits. In turn, the  
13 Sales Assistants' per-unit bonus amounts were generally the only amount allocated  
14 from gross commissions.

15           32. However, Plaintiffs retained the discretion to adjust the base salary of  
16 their Sales Assistants upward or downward from the \$2,500 amount paid by WaMu.  
17 Accordingly, Plaintiffs could set a Sales Assistant's base salary at less than \$2,500  
18 and use the remaining portion of the Bank-allocated funds to compensate their  
19 assistants for per-unit bonus amounts. Alternatively, Plaintiffs could set a Sales  
20 Assistant's base salary at an amount greater than \$2,500, subject to the condition that  
21 Plaintiffs would normally absorb this additional expense (plus benefits adjustment).

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22 <sup>1</sup> In some plan years, lower-producing Loan Consultants had the option to take on a  
23 Non-Production Qualified Sales Assistant and, in later years, a Partial-Production  
24 Qualified Sales Assistant. With respect to these categories of assistants, WaMu  
25 absorbed less (or none) of the Sales Assistant's compensation, and instead, the Loan  
26 Consultant would be responsible for these amounts through the allocation of a  
27 Commission Threshold or Adjustment. However, none of the Plaintiffs ever worked  
28 with a Non-Production Qualified Sales Assistant, and only one Plaintiff (Hoffman-  
Barron) worked with a Partially-Production Qualified Sales Assistant, and only for a  
few short months before that Assistant became a Full-Production Qualified Sales  
Assistant. All of Plaintiffs' Sales Assistants were otherwise Full-Production Qualified  
at all times.

1           33. In fact, in some cases, WaMu agreed to fund in excess of \$2,500 toward  
2 Plaintiffs' Sales Assistants' compensation. In this regard, in or around August 2002,  
3 Plaintiff Hoffman-Barron qualified for a third Sales Assistant, in addition to her two  
4 existing assistants; rather than hire an additional team member, Hoffman-Barron was  
5 approve for an exception that allowed her to reallocate the \$2,500 WaMu would have  
6 paid toward a third Sales Assistant to raise the base salaries of her two existing  
7 assistants. Thus, Hoffman-Barron's assistants began to earn base salaries of \$4,500  
8 and \$3,000, respectively, the entire amounts of which were funded by the Bank.

9           34. Similarly, although Minkow and O'Brien eventually qualified for the  
10 support of seventeen Sales Assistants as of April 2004, they elected to utilize fewer  
11 assistants, and chose to reallocate the additional funds to their existing Sales  
12 Assistants.

13           35. Thus, through the process of determining their Sales Assistants'  
14 compensation structure, all Loan Consultants, including Plaintiffs, prospectively  
15 decided what amounts, if any, of their gross commissions they would allocate to and  
16 share with their Sales Assistants.

17           36. These discretionary compensation amounts, which Plaintiffs  
18 prospectively and voluntarily agreed to absorb, were deemed the "Commission  
19 Threshold" or "Commission Adjustment."

20           37. In this regard, the terms and conditions of WaMu's LCI Plan and Sales  
21 Assistant Plan provided that, as a condition precedent to the accrual and payment of  
22 commissions, Plaintiffs were required to meet the "Commission Threshold" or  
23 "Commission Adjustment" amount, as set forth in the LCI Plans, Sales Assistant  
24 Plans, and the Sales Assistant Election Forms/Participation Agreements.

25           38. Specifically, the Sales Assistant Plans for 2000 and 2001 provided:  
26 "Loan Consultants . . . eligible for and electing participating in the Sales Assistant  
27 Program agree to meet a commission threshold before qualifying for commission  
28

1 payout . . . . The Loan Consultant . . . WILL NOT be paid commissions until the  
2 commission threshold has been met.”

3 39. This same condition continued in subsequent plan years 2002 and 2003,<sup>2</sup>  
4 substituting the term “Commission Adjustment” for “Commission Threshold”: “[Loan  
5 Consultants] eligible for and electing participation in the Sales Assistant Plan agree to  
6 a commission adjustment (if required) before qualifying for commission payout. The  
7 commission adjustment is the amount subtracted from the [Loan Consultant’s]  
8 commission for any part of base salary or bonus in excess of the bank-subsidized  
9 portion for a Sales Assistant . . . . The [Loan Consultant] WILL NOT be paid  
10 commissions until the commission adjustment has been met.”

11 40. Thus, Plaintiffs prospectively agreed to the Sales Assistant Program’s  
12 condition that, until they met the “Commission Threshold” or “Commission  
13 Adjustment” amounts of the Sales Assistant Program they themselves had designated,  
14 Plaintiffs themselves did not qualify for or accrue or earn commissions.

15 41. In addition to the terms and conditions of the Sales Assistant Program,  
16 the LCI Plans provided that gross commissions are subject to a reconciliation process,  
17 as explained above, before commissions were vested and paid to Plaintiffs.

18 42. As set forth in the 2002 and 2003 LCI Plans (either in the plan documents  
19 themselves and/or in the Administrative Guidelines that accompanied the LCI Plans  
20 and were incorporated by reference therein): “Commissions and incentives are not  
21 earned when performance occurs. Rather, commissions and incentives are only  
22 earned after a calculation and reconciliation period following the end of the relevant  
23 Measurement Period. Commissions and incentives are earned on the Reconciliation  
24 Date. Participants have no right or entitlement to commission or incentives until the  
25 amounts are determined and earned on the Reconciliation Date . . . . The reconciliation  
26 date is the date after the close of performance period when Washington Mutual  
27

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28 <sup>2</sup> The 2003 Plan remained in effect through and until April 2004.

1 calculates commissions and/or bonuses based on the Plan provisions and reconciles  
2 items such as cancellations, write-offs, bad loans, outstanding advances, etc.”

3 43. The application of the reconciliation period and the concept that  
4 commissions were not earned until after any and all applicable adjustments was  
5 WaMu’s standard practice, policy and procedure, which applied to all relevant plan  
6 years from, at least, 1999 through 2004.

7 44. This reconciliation process was necessary to determine the amount of  
8 commissions that Loan Consultants, including Plaintiffs, were eligible to earn each  
9 month, after application of upward adjustments and/or downward adjustments.

10 45. Since Plaintiffs first began hiring and retaining Sales Assistants pursuant  
11 to WaMu’s Sales Assistant Program, Plaintiffs’ overall loan production steadily  
12 increased, which enabled Plaintiffs to continually request and receive the support of  
13 additional Sales Assistants.

14 46. By April 2004, Plaintiff Hoffman-Barron was qualified for the assistance  
15 of four Sales Assistants. In this regard, Hoffman-Barron was required to originate no  
16 less than \$144 million in annual loan volume. Based on the commission tiers set forth  
17 in WaMu’s 2003 LCI Plan, this meant that Hoffman-Barron likely generated at least  
18 \$864,000 in gross commissions from these sales, which amount represents only her  
19 basis point commissions on this loan volume.

20 47. Similarly, Minkow and O’Brien qualified for seventeen Sales Assistants  
21 as of April 2004. As such, Minkow and O’Brien’s partnership must have originated  
22 more than \$612 million in annual loan production. Accordingly, based on the  
23 commission tiers set forth in WaMu’s 2003 LCI Plan, Minkow and O’Brien’s  
24 partnership generated no less than \$3.67 million in gross commissions, which amount  
25 represents only their basis point commissions on this loan volume.

26 48. Throughout the course of their participation in WaMu’s Sales Assistant  
27 Program, Plaintiffs were provided with copies of the LCI Plan and Sales Assistant  
28 Plan and program documents at the outset of each and every year.

1           49. Moreover, Plaintiffs signed Election Forms/Participation Agreements for  
2 each Sales Assistant they retained through the Sales Assistant Program, at the outset  
3 of every year and/or whenever a Sales Assistant's employment or compensation terms  
4 were changed.

5           50. By signing these Election Forms/Participation Agreements, Plaintiffs  
6 expressly acknowledged and agreed to adhere to all of the terms and conditions of the  
7 LCI Plan and Sales Assistant Plan and Program, as described in detail above. In this  
8 regard, the Election Forms/Participation Agreements explicitly provided: "All parties  
9 to this Agreement agree to the terms outlined above . . . and to be bound by the [*Plan*  
10 *Year*] Sales Assistant Program document and its terms . . . . I agree that in conjunction  
11 with my participation in the [*Plan Year*] Sales Assistant Program I must meet a  
12 Commission Threshold before I will receive a commission payout. The compensation  
13 paid to the Sales Assistant (as stated on this form) will be deducted from my  
14 commissions as a commission adjustment prior to my receiving commissions."

15           51. From July 2001 through April 2004 alone, Plaintiff Hoffman-Barron  
16 signed at least fifteen Election Forms/Participation Agreements, and Plaintiffs  
17 Minkow and O'Brien collectively signed more than thirty Election  
18 Forms/Participation Agreements.

19           52. Further, Plaintiffs were provided with (or had access to) monthly  
20 commission statements that provided a line-by-line description of all calculations and  
21 adjustments applied during the reconciliation period, including any adjustments  
22 related to the Sales Assistant Program, before Plaintiffs' net commission were  
23 determined and any amounts were earned or paid out.

24           53. Plaintiffs were not subject to deductions from their net commissions for,  
25 and Plaintiffs' paycheck stubs did not reflect any deductions for, any payments to or  
26 for their Sales Assistants.

27           54. WaMu's LCI Plan provided a specific mechanism by which Plaintiffs  
28 had the ability to lodge a complaint or grievance concerning their commissions:

1 “APPEALS. Washington Mutual is committed to providing internal appeal and  
2 review procedures regarding Participant incentive or bonus pay concerns and/or  
3 disagreements . . . . Participants are encouraged to seek relief or remedy for their  
4 concerns or disagreements from the designated Incentive Plan Administrator.”  
5 Plaintiffs did not lodge any such appeals during their participation in the Sales  
6 Assistant Program, or at any time during their employment with WaMu.

7 55. Instead, Plaintiffs consistently and voluntarily elected to participate in the  
8 Sales Assistant Program and to retain the support of Sales Assistants because the  
9 additional sales support provided by the Sales Assistant Program enabled them to  
10 achieve greater financial success than they would have otherwise been able to achieve  
11 without the support of Sales Assistants.

## 12 **CONCLUSIONS OF LAW**

13 1. Plaintiffs’ First Claim for Relief Fails Because Washington Mutual’s  
14 Loan Consultant Incentive Plans and Sales Assistant Plans and Program Did Not  
15 Violate Plaintiffs’ Rights Under California Labor Code Section 221.

16 2. Plaintiffs’ First Claim for Relief Fails Because All Adjustments Related  
17 to Plaintiff’s Voluntary Participation in Washington Mutual’s Loan Consultant  
18 Incentive Plans and Sales Assistant Plans and Program Do Not Violate California  
19 Labor Code Section 221.

20 3. Plaintiffs’ First Claim for Relief Fails Because All Adjustments Related  
21 to Plaintiff’s Voluntary Participation in Washington Mutual’s Loan Consultant  
22 Incentive Plans and Sales Assistant Plans and Program Are Specifically Authorized  
23 Pursuant to California Labor Code Section 224.

24 4. Plaintiffs’ Second Claim for Relief Fails Because Washington Mutual  
25 Did Not Fail to Pay Plaintiffs All Compensation Due and Owing Upon Plaintiffs’  
26 Separation from Employment with Washington Mutual.

1           5.     Plaintiffs' Second Claim for Relief Fails Because Washington Mutual  
2 Did Not Willfully Fail to Pay Plaintiffs All Compensation Due and Owing Upon  
3 Plaintiffs' Separation from Employment with Washington Mutual.

4           6.     Plaintiffs' Third Claim for Relief Under California Business and  
5 Professions Code Section 17200 Fails Because It Is Duplicative and Coextensive with  
6 Plaintiffs' First Claim for Relief, Which Itself Fails.

7  
8 Dated: August 6, 2009



HONORABLE MANUEL L. REAL  
U.S. DISTRICT COURT JUDGE